

GUIDE FOR GROUPS INTERESTED IN CHARTERING A STATE BANK IN GEORGIA

INTRODUCTION

This guide should be used together with other Department publications (Applications Manual, Statement of Policies, Georgia Law/Department's Rules and Regulations) making specific reference to Bank Charters. Users should refer to the Applications Manual and Statement of Policies for a discussion of general filing instructions and procedures.

The marketplace is normally the best regulator of economic activity, and the competition therein promotes efficiency and better customer service. Accordingly, the Department approves proposals to establish state banks that have a reasonable chance of success, will foster healthy competition, and are expected to be operated in a safe and sound manner. In doing so, the Department does not guarantee that a proposal to establish a state bank is without risk to the organizers.

The Department evaluates a proposed state bank's organizing group and its Business Plan. The Department's judgment of one may affect the evaluation of the other. An organizing group and its Business Plan must be stronger in markets where economic conditions are marginal or competition is intense. If higher risk or unusual banking services or corporate arrangements are proposed, the Department may require additional information and may conduct a more intensive review.

Decision Criteria

The six legal factors that are considered by the Department in reaching a decision upon the application are: **(1)** Financial History and Condition of the Institution, **(2)** Adequacy of the Capital Structure, **(3)** Future Earnings Prospects, **(4)** Character and Capacity of Management, **(5)** Convenience and Needs of the Community to be Served, and **(6)** Consistency of Corporate Powers. (NOTE: The Federal Deposit Insurance Corporation (FDIC) has an additional factor to consider - Risk to the Insurance Fund).

In reaching its decision, the Department considers whether the proposed bank:

- * Has adequate banking facilities to support its operations.
- * Has competent management, including the board of directors, with ability and experience relevant to the type of services to be provided.
- * Has capitalization that is sufficient to support the projected volume and type of business.
- * Can reasonably be expected to achieve and maintain profitability.
- * Has developed a Business Plan that appears viable given the economic condition, growth potential, and competition of the proposed market area.
- * Is free from abusive insider transactions and apparent conflicts of interest.

SUMMARY OF THE CHARTERING PROCESS

Pre-filing Discussions

As soon as the organizers are prepared to proceed, a representative should contact the Department's Corporate Division to schedule a pre-filing meeting. The application package is normally distributed to the organizing group or their consultant after the pre-filing meeting. In most cases, the Department expects all organizers of the proposed new state bank and the proposed Chief Executive Officer to attend the pre-filing meeting.

At the pre-filing meeting, or in informal discussions, Department representatives review with the organizing group the Department's chartering policy and procedures and the requirements for filing a charter application and organizing a state bank.

A representative from the FDIC and/or the Federal Reserve Bank (FRB) will normally participate in the pre-filing meeting to discuss procedures relative to their involvement in the chartering process.

Pre-filing meetings or informal discussions with the Department are kept confidential. No information regarding the charter proposal or the organizing group is released to the public until after the application is filed with the Department, is determined to be substantially complete, **and** is officially accepted in writing by the Department. Once the application has been officially accepted by the Department, the public portion of the file is available for public inspection. Confidential sections of the application, including biographical and financial information on the organizers, directors, executive officers, and 10% shareholders, the Business Plan, and any other proprietary information (as determined by the Department), will not be available to the public.

Filing the Application with the Department

After the pre-filing meeting, the group files an application and other supplement information that is detailed in the application instructions. The group is strongly encouraged to name and include information on the proposed CEO in the application.

The Department begins to process each application immediately upon receipt. As appropriate, the Department reviews and analyzes the proposal, requests additional information if necessary, completes field investigations where necessary, and attempts to resolve any unusual issues.

Regular Applications

Most organizing groups must file their charter applications using the Department's standard application procedures. In the case of a standard application, the Department seeks to make a decision within 90 days after acceptance. The FDIC's standard processing period for the Deposit Insurance Application is 120 days (60 days for an expedited application). A well-researched and thoughtfully prepared application helps the Department make a timely decision. The Department may request clarifications or additional information through the consultant, attorney, or other key representative for the group. Requests for additional information could extend the processing period beyond the normal 90 day time frame. A field investigation is required and will be conducted jointly with the applicable federal regulator(s).

Applications filed by Existing Holding Companies (O.C.G.A. Section 7-1-608(b)(3))

For an application filed by an existing bank holding company, the Department will evaluate the financial and managerial resources of the holding company. The Department will review the proposed bank's Business Plan for consistency and compatibility with the holding company's record of performance, overall philosophy, and plans (e.g., strategy, capital, management, and profitability).

The Department may deny or conditionally approve a “sponsored” new bank application, if the condition of the parent company and/or any affiliates are subject to supervisory concern. Conversely, when the holding company serves as a substantial source of strength, the Department may approve an application, even in a market in which economic conditions are weak and/or competitive conditions are intense.

Expedited Applications

The Department may permit expedited treatment of a charter application, if the applicant meets certain requirements AND the application is being filed by an eligible bank holding company (see O.C.G.A. Section 7-1-608(b)(3) and Rule 80-6-1-.16 of the Department’s Rules and Regulations). The FDIC may also permit expedited treatment of the Application for Deposit Insurance if the applicant meets the qualifying criteria. Normally, an application that qualifies for expedited treatment will not require a formal pre-filing meeting with all organizers present. Reference should be made to the Department’s Applications Manual for further information.

An “**Eligible holding company**” is defined in the Rule 80-6-1-.16 of the Department’s Rules and Regulations and Section 303.22(a) of the FDIC’s Rules and Regulations as follows:

- A bank or thrift holding company (BHC) that has consolidated assets of \$150 million or more;
- has an assigned BOPEC or Thrift Holding Company composite rating of “2” or better; and,
- has a least 75% of its consolidated depository institution assets comprised of eligible depository institutions.

An “**eligible bank**” is a bank that:

- (1) has a composite rating of “1” or “2”,
- (2) has a compliance rating of “1” or “2”,
- (3) has a Satisfactory or better CRA rating,
- (4) is well-capitalized as defined by the appropriate capital regulations of its primary federal regulator, and
- (5) is not subject to any form of administrative agreement (such as an MOU, Cease and Desist Order, Prompt Corrective Action, etc.) with its primary federal regulator or chartering authority. The definition of administrative agreement generally excludes a Board Resolution for minor supervisory matters. However, an application can be removed from expedited processing for various reasons, including, but not limited to the following:
 - a) Safety and soundness concerns of the Department dictate a more comprehensive review;
 - b) Any material adverse comment is received by the Department;
 - c) Other supervisory concerns, legal issues, or policy issues come to the attention of the Department;
 - d) If applicable, any acquisition of fixed assets would cause the institution to exceed the statutory fixed asset limitation; or
 - e) Any other good cause exists for denial or removal.

If the applicant meets expedited processing criteria, or the Department grants expedited treatment for an applicant who fails only the “size criteria”, the group may submit an abbreviated charter application to the Department. The Department may require additional information at any time to reach an informed judgment about the application. If the applicant does not qualify for expedited processing, the Department will require the application to be completed according to its standard submission guidelines.

An application to establish a state bank that is sponsored by a BHC whose lead depository institution is an eligible depository institution is subject to a 60 day processing period from date of acceptance, unless additional information is requested that would extend the processing period. In most cases, an application accorded expedited treatment will not require a formal field investigation.

Deposit Insurance and Filing with the FDIC

Georgia law requires FDIC insurance for all state bank charters. The Department and the FDIC encourage simultaneous submission of the charter and deposit insurance applications, respectively, to expedite processing. Organizers may append the Department's charter application to the FDIC's deposit insurance application, when information requests are the same. Although the FDIC may reduce information requirements for some applicants, the applicant should discuss the deposit insurance application requirements and any requests for waiver or reduction of information with appropriate FDIC staff.

The Department and the FDIC conduct their investigations jointly to minimize the burden to the applicant and to eliminate duplicative regulatory effort. *However, the decision to grant or deny the charter application is an independent decision from the decision to grant or deny deposit insurance; therefore, each regulatory agency must make its decision separately.*

Federal Reserve Membership

Banks electing to be a state member bank of the FRB will be required to file a membership application with the FRB. The membership application for a de novo bank is a standard 30-day procedure. The FRB also requires a de novo bank to obtain preliminary charter approval from the state chartering authority before applying for membership. The procedure is the same for de novo banks with or without a holding company structure.

Publication Requirements and Comment Periods

Publication requirements are detailed in the Department's Applications Manual. A publication for the bank's Articles of Incorporation is required. In addition, a public comment publication is required for the charter application and may be joint with the publication required by federal regulator.

Department Regulation requires that the applicant publish a notice in a newspaper of general circulation in the community(s) in which the applicant proposes to engage in business. This one time notice gives interested parties a right to comment in favor of or to protest the application. Any person wishing to comment on or formally protest the applicant must notify the Department in writing within the 30 day comment period, unless the comment period has been extended by the Department.

All comments and any notices of intent to protest with request for a public hearing that are filed on a timely basis will be reviewed and considered by the Department. The Commissioner may grant or deny a request for a hearing in connection with a protest of the application. If the Commissioner grants a hearing, the contestants shall bear the cost of the hearing (unless it is requested by the applicant, in which case the applicant will bear the cost). It should be noted that, if a hearing is granted, the application processing period will normally be extended by at least 30 days. Final determination to grant or deny a charter application shall be in the sole discretion of the Commissioner or his legally authorized representative, and such action shall be final.

Background Investigations

The Department normally requires each organizer, director, executive officer, and 10% shareholder to submit biographical and financial reports. The Department will determine independently the accuracy and completeness of information submitted for each person and must determine that there is no objection to each individual serving in the proposed capacity. The FDIC's Regional Director may waive financial information for those persons who are being proposed as directors or officers of the applicant. The FDIC-required background checks and fingerprint cards may also be waived by the Regional Director for individuals who are currently associated with, or have had a *recent* past association with an insured institution. An applicant meeting expedited processing criteria may request that the Department waive certain financial information on proposed organizers, directors, or officers who are currently associated with, or have had a recent past association with an insured institution. The Department will consider each request and may require additional information, if needed. The Department also reserves the right to request additional information after granting such a waiver, if necessary.

Business Plan and Feasibility Study

The proposed market area to be served must be reasonable in view of the applicant's Business Plan, the proposed banking facility(s), the proposed management team and other personnel resources, and in view of other relevant geographic or demographic factors.

It is incumbent upon the applicant to fully develop and address the "Convenience and Needs" section of the application. This is generally accomplished through two documents supplemental to the application - a Feasibility Study and a Business Plan. The Feasibility Study should contain information in support of the economic vitality of the community to be served and its financial services industry, both historical and projected into the future. The Business Plan should outline the applicant's plan for marketing the proposed new bank's services and otherwise participating and competing in the delineated market. Together, the Business Plan and Feasibility Study are critical to the Department's decision to grant the group approval to organize a state bank. Projections and other information submitted must reflect sound banking principles and demonstrate realistic assessments of risk in light of economic and competitive conditions in the market to be served. The Plan should contain sufficient information to demonstrate that the proposed bank has a reasonable likelihood of success. Assumptions and projections should be realistic in view of the economic and demographic information regarding the proposed market area and should also be consistent with all other information presented in the application.

The Business Plan should indicate the organizing group's knowledge of and plans for serving the proposed bank's market area. The organizing group must evaluate the banking needs of the community, including its consumer, business, nonprofit, and government sectors. The Business Plan should demonstrate how the proposed bank will respond to those needs consistent with the safe and sound operation of the bank.

Where the bank is being established as a natural extension of a holding company's existing market (via conversion of a branch office into a "stand-alone" bank), the "Convenience and Needs" section of the application may be abbreviated at the applicant's discretion. However, the applicant must recognize that the Department is still required to arrive at a favorable finding regarding the "Convenience and Needs" factor.

Field Investigations

The Department normally does not conduct a field investigation for a charter application accorded expedited treatment. The Department, however, conducts a field investigation for independent bank charters. In situations where an applicant meets all expedited processing criteria except for the holding company size criteria, the Department will determine on a case-by-case basis whether to conduct a field investigation.

The Department tailors the scope of each investigation, during which a state bank examiner may review relevant materials, interview insiders and other identified persons, explore matters related to the proposed bank's operations, and meet with the organizing group to discuss findings. The findings from that investigation will influence the Department's overall analysis and review of the application. As referenced in a preceding section of this document, the Department will conduct the field investigation jointly with the applicable federal regulator(s). However, the Department and the federal regulator(s) will reach independent decisions regarding whether to grant or deny the respective applications filed with each agency.

Standard Requirements and Special Conditions

When the Department grants approval of a charter proposal, it imposes standard requirements on the proposal. Often, the organizing group must meet most (if not all) of the standard requirements before opening. In addition, the Department may impose special conditions tailored to the specific charter proposal.

Approval and Post-Approval Activities

Following review of the application and completion of the field investigation or desk review (if expedited), the Department will decide whether to approve or deny the request to charter a new state bank. If the Department grants approval, it will notify the applicant and other interested parties in writing of its decision. The organizing group then may begin to organize the bank according to the plan set forth in the application. The approval letter will detail the conditions upon which the charter is granted.

OTHER INFORMATION

Organizing Group's Role

The organizing group is usually comprised of five or more persons. Normally, many, if not all, of the organizers serve as the bank's initial board of directors (State law requires that a bank have a minimum of five, but not more than 25 directors).

The organizers are responsible for:

- * Ensuring that the group consists of persons:
 - (a) Having diverse business and financial interests and community involvement,
 - (b) Having a personal history that reflects responsibility, honesty, and integrity, and
 - (c) Exhibiting substantial personal and financial commitment to the proposed bank relative to their collective and individual financial strength.
- * Selecting the CEO and other executive officers, if possible, early in the application process who have the necessary experience to enhance the proposed bank's likelihood of success.
- * Developing a Business Plan that demonstrates the group's collective ability to establish and operate a successful bank in view of the economic and competitive conditions of the market to be served.
- * Being familiar with the Business Plan and their role in its successful implementation.

Although personal wealth is not a prerequisite for a state bank director, a director should not depend on bank dividends, fees, or other compensation to satisfy financial obligations. Because directors are often the primary source of additional capital for a bank not affiliated with a bank holding company, an organizer/director having the financial strength to supply additional capital, if needed, adds significant strength to the application.

Identification of CEO

Selection of a qualified CEO is one of the organizing group's most important decisions affecting the success of the new bank. The organizing group and its CEO must have the experience, competence, willingness, and ability to actively direct the proposed bank's affairs in a safe, sound, and legal manner. (NOTE: It is expected that a qualified lending officer will be provided for in the management structure; however, the CEO need not be that person.)

The Department considers the hiring of a competent CEO to be essential to a new bank's success. The proposed CEO should:

- * Be involved actively in developing the proposed bank's Business Plan. The CEO must implement the proposed plan successfully once the bank opens.
- * Be a well-rounded person with strong leadership skills, who has managed a bank or similar financial institution successfully or has successful experience as an officer in areas relevant to the proposed bank's marketing strategy and needs. Prior experience as a bank CEO, while not mandatory, is strongly recommended and typical for most proposed CEOs.
- * Possess skills that complement those of the directors and other proposed members of the executive officer team, including extensive experience in administration.

The proposal of a strong CEO, organizing group, and board of directors enhances the chances of approval. The Department can better evaluate proposed management in its review of the Business Plan, when the name of the proposed CEO is disclosed in the application. However, the CEO can be named in the confidential section of the application if the group wishes to prevent the CEO candidate's name from being available to the public.

Capital Adequacy

An organizing group must raise a sufficient amount of capital to pay all organization costs, compete effectively in the market area, and support planned operations adequately. The Department may determine that higher or lower amounts of capital from those proposed originally are needed based on local market conditions or the Business Plan presented by the organizing group. The Department expects projected capital for new banks to be 8% for the first three years of operations (Tier 1 leverage capital ratio). Refer to the Department's Statement of Policies on Bank Charters for further details regarding minimum capital requirements.

The Department has no general prohibition against the inclusion of preferred stock in the initial capital structure of a new state bank. However, the Department may determine that the inclusion of a significant amount of preferred stock in a bank's capital structure could lead to instability in the ownership of the bank or otherwise adversely affect the safety and soundness of the institution.

The organizing group should disclose any options, warrants, and/or other benefits associated with the proposed capital. Such disclosure should be made regardless of whether it is at the bank or holding company level (refer to the Statement of Policies for further details).

The Department generally is opposed to debt-based capitalization of a new bank. If any debt will be issued by the holding company or affiliate to capitalize the bank, the organizing group must demonstrate that debt service requirements can be met without reliance on cash flows of any kind from the bank.

Organizers Stock Options/ Warrants

The Statement of Policies for both the Department and the FDIC allow for organizer warrants/options if they meet the requirements outlined by both regulatory authorities. Generally, a plan to compensate organizers that provides for one option/warrant for each share subscribed is considered to be acceptable to both the Department and the FDIC.

Insider Agreements/Contracts

Any insider contract must be made on non-preferential terms and submitted to the Department and the appropriate federal regulator(s) for review. In addition, if the proposed contract involves an insider, the Department requires at least one, and in some cases two, independent appraisal(s) of the contract, which includes:

- * Its description (e.g., assets, property, service).
- * Its terms.
- * Evidence showing that the contract is fair, reasonable, and comparable to similar arrangements that could have been made with unrelated parties.

Each insider contract also must be disclosed to proposed or actual shareholders. Copies must be maintained in the bank's files and made available to shareholders upon request.

An example of such an insider agreement and/or contract includes one that involves the payment or receipt of any money or thing of value as compensation for services rendered or property transferred in organizing the proposed state bank (e.g.,

purchase or lease of banking premises, furniture, equipment, fixtures, supplies, consultant or legal fees, preparation of registration statement or nonpublic offering, solicitation of stock).

Regardless of insider involvement, every contract, including real estate or employment commitments, should include provisions addressing obligations of and options available to the parties in the event that the Department is delayed in processing the charter application; denies the application; revokes its approval, or objects to an insider serving in any proposed capacity.

Organization Costs

Organizers must contribute time and expertise to the organization of the bank. Organizers should not bill excessive charges to the bank for professional and consulting services or rely unduly upon those fees as a source of income. Further, organizers should act prudently on all financial and other aspects of the proposal.

CONTACT LIST

REGULATORY CONTACTS FOR FILING THE APPLICATION

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